SUPREME COURT, U.S.
NOV 19 1951

No. 209

In the Supreme Court of the United States

OCTOBER TERM, 1951

UNITED STATES, PETITIONER

v.

JOHN STUART KELLY ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the Court of Claims (R. 27–37) is reported at 96 F. Supp. 611.

JURISDICTION

The judgment of the Court of Claims was entered on May 1, 1951 (R. 37). The petition for a writ of certiorari was filed on July 26, 1951, and was granted October 8, 1951. The jurisdiction of this Court rests on 28 U. S. C. 1255(1).

QUESTION PRESENTED

In May 1943, a Presidential directive declared the wartime need for maximum output in all

Government activities and directed that days normally observed by federal employees as holidays should be considered as regular work days for the duration of World War II. Federal per annum employees worked on these days throughout the war period without any additional compensation.

Respondent, an employee of the Government Printing Office, was required to work on ten holidays during World War II. His compensation was fixed on an hourly basis under a wage agreement providing that holiday work should be compensated at the regular rate increased by 50% plus "gratuity pay for the holiday as provided by law." Under the applicable Joint Resolution of June 29, 1938, respondent was entitled to gratuity pay for those holidays only on which he was "relieved or prevented from working solely because of the occurrence" of such holiday.

The question presented is whether the court below erred in construing the applicable wage agreement and federal pay statutes so as to allow federal per diem and per hour employees in the Government Printing Office two and one-half times their daily rate of pay for each holiday worked during the war period.

STATUTES AND WAGE AGREEMENT INVOLVED

1. The Joint Resolution of June 29, 1938 (52 Stat. 1246, 5 U. S. C. (1946 ed.) 86a) provides:

> * * * That hereafter whenever regular employees of the Federal Government

whose compensation is fixed at a rate per day, per hour, or on a piece-work basis are relieved or prevented from working solely because of the occurrence of a holiday such as New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, or any other day declared a holiday by Federal statute or Executive order, or any day on which the departments and establishments of the Government are closed by Executive order, they shall receive the same pay for such days as for other days on which an ordinary day's work is performed.

"SEC. 2. The joint resolution of January 6, 1885 (U. S. C., title 5, sec. 86), and all other laws inconsistent or in conflict with the provisions of this Act are hereby repealed to the extent of such inconsistency or conflict.

2. The 1924 wage agreement between the Public Printer and journeymen printers provides in pertinent part (R. 7):

Holiday Rate.—Employees required to work on a legal holiday or a special holiday declared by Executive Order shall be paid at the day rate plus 50 per cent for all the time actually employed in addition to their gratuity pay for the holidays as provided by law * * *.

3. The pertinent portions of the Acts of January 13, 1883 (22 Stat. 402); January 12, 1895

sec. 46 (28 Stat. 607, 44 U. S. C. (1934 ed.) 44); and June 7, 1924 (43 Stat. 658, 44 U. S. C. (1946 ed.) 40); and of the Joint Resolutions of April 16, 1880 (21 Stat. 304), and January 6, 1885 (23 Stat. 516, as amended, 5 U. S. C. (1934 ed.) 86) are set forth in Appendix A, *infra*, pp. 41–44.

STATEMENT

This action was instituted by a petition filed in the Court of Claims by respondent Kelly and 613 other employees of the Government Printing Office, seeking compensation at the rate of two and one-half times their regular rate for work performed by them on ten holidays during World War II (R. 1–3, 24, 27). The parties stipulated that the claim of respondent Kelly should serve as a test case for the determination of the other 613 claims (R. 5–6).

The pertinent facts are these:

1. A Presidential directive, dated May 12, 1943, provided that days normally observed by the departments and agencies as holidays, with the exception of Christmas, should be considered as regular work days for the duration of the war.[1] This directive was reaffirmed on December 17, 1943, by Mr. W. H. McReynolds, Administrative Assistant to the President, in the following state-

[1] See Digest of Provisions of Law Fixing Pay for Employees in the Executive Branch of the Federal Government, compiled by the U. S. Civil Service Commission, March 1945, p. 94, and *infra*, pp. 5–6.

ment addressed to the heads of the Federal Departments and Agencies:

On May 13, 1943, by direction of the President, I issued the following statement concerning the observation of holidays:

"The necessity for maintaining maximum output in Government activities throughout the war period requires that days normally observed by the departments and agencies as holidays should, with the exception of Christmas, be considered as regular work days for the duration of the war."

This policy is consistent with the attitude of the Government toward maintenance of full production in war industry on Holidays other than Christmas.

The President has reaffirmed his desire previously expressed on this matter.

There is full realization of the long hours which Federal employees are continuously working in the interest of the war effort and of the fact that *holiday work is performed by Federal employees without additional compensation.* The policy with respect to work on holidays will be reconsidered at the earliest possible moment that progress in the war will permit.

Christmas Day and Christmas Eve have traditionally been important family days in the life of this Nation. The President has indicated that the heads of departments and agencies may, in their discretion, per-

> mit offices or establishments to be closed or any employees whose services can be spared to leave their work not earlier than two hours in advance of the usual closing time on Christmas Eve, December 24.
>
> With respect to forthcoming holidays other than Christmas you are advised that the President expects them to be observed as regular working days.' [Italics supplied.]

Per annum employees accordingly worked on these holidays without compensation and this rule was applied also to those per annum employees entitled to extra compensation for holiday work. *Di Benedetto* v. *United States*, 108 C. Cls. 18, certiorari denied, 332 U. S. 763.[2]

2. Respondent Kelly was a journeyman printer employed in the Government Printing Office. His salary was fixed on an hourly basis by a wage agreement negotiated between the Public Printer and an employee's committee as provided by the Act of June 7, 1924 (Appendix, *infra*, pp. 42–44). (R. 22–23.)[4] Kelly, who was on the night shift,

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[2] This quotation is from the Special Findings of Fact of the Court of Claims in *Di Benedetto* v. *United States*, 108 C. Cls. 18, 21–22, certiorari denied, 332 U. S. 763.

[3] Executive Order No. 9240 of September 9, 1942, 7 F. R. 7159, had limited the holiday pay of persons employed in war work to one and one-half times the regular wage.

[4] This wage agreement originally had become effective October 27, 1924. It was amended from time to time thereafter (R. 22). An amendment which took effect on August 13, 1944 (cf. R. 4) changed the wage rates (cf. Finding No. 6, R. 24) but did not affect the holiday pay provisions.

worked on ten holidays during wartime pursuant to the above-mentioned Presidential directives and received for this work the regular hourly rate plus night differential (Finding No. 6, R. 24). Kelly, however, asserted that, in addition to this, he was entitled to one and one-half times the day rate, by virtue of the holiday rate clause of the wage agreement which reads as follows:

> *Holiday Rate.*—Employees required to work on a legal holiday or a special holiday declared by Executive Order shall be paid at the day rate plus 50 per cent for all the time actually employed in addition to their gratuity pay for the holiday as provided by law. * * *[3]

Respondent's claim for additional compensation was forwarded to the Comptroller General's Office where it was disallowed (R. 24; 4–5) on the grounds that the Joint Resolution of June 29, 1938 (52 Stat. 1246, *supra*, pp. 2–3) had abolished gratuity pay for work performed on holidays, and that the payment of 50% extra compensation was prohibited under the Act of March 28, 1934 (48 Stat. 522). Kelly, taking the position that the two enactments had no bearing on his claim, brought suit in the Court of Claims seeking recovery of pay equal to one and a half

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[3] Under this paragraph, the compensation for holiday work consists of three elements:

a. The day, for which he has been paid (R. 24);

b. An additional compensation of 50% (*infra*, p. 8); and

c. Gratuity pay for the holiday "as provided by law."

times the day rate, in addition to the night rate already collected by him. The case was tried on the basis of a detailed stipulation of facts (R. 5–22, cf. R. 22–26).

3. The Court of Claims held unanimously that the Act of March 28, 1934, *supra*, did not defeat respondent's right to the 50% extra compensation. Petitioner has not questioned this branch of the decision (Appendix B, *infra*, pp. 45–46; Petition for a Writ of Certiorari, p. 10, fn. 9). With respect to the respondent's claim for "gratuity pay as provided by law," the court below held—Jones, C. J. and Whitaker, J. dissenting—that the award of premium pay for holiday work was based on an administrative construction of the pertinent statutes going back to 1895 and that neither the language of the 1938 statute nor its legislative history contained any express indication that Congress intended to abrogate these rights enjoyed by the employees of the Government Printing Office for more than forty years. It felt that the sole purposes of the 1938 Resolution were the grant of holiday pay to per diem workers on holidays proclaimed by Executive Order and the abolition of the rule that per diem employees were entitled to holiday pay even if the holiday fell on a nonworking day. The court refused to attribute to Congress an intent to award to an employee who worked on a holiday the same pay as to one who did not.

The dissenting judges urged that the language

of the 1938 Resolution was unambiguous; that there should be no recourse to considerations extraneous to that language; and that its language was consistent with the express purpose of the Resolution to put per diem workers on a parity with per annum workers. Moreover, they pointed out that employees required to work on a holiday received 50% more than those who did not work, and while they thought that this differential was inadequate,[6] the remedy for this supposed injustice lay with Congress.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Claims erred:

1. In holding that the Resolution of June 29, 1938, 52 Stat. 1246, required the payment of gratuity pay to per diem employees on holidays on which they worked.

2. In holding that respondent was entitled to gratuity pay for a holiday on which he worked.

3. In entering judgment for respondent for gratuity pay.

SUMMARY OF ARGUMENT

Respondent seeks compensation for work performed on ten holidays during World War II. Under the wage agreement covering his trade, the holiday compensation to which he was entitled

[6] The same differential applied to war industries throughout World War II. *Termination Report of the War Labor Board*, Vol. I, p. 361. On May 28, 1946, the Public Printer increased the differential to 100% (R. 26, fn. 4).

was composed of three items: (a) the day rate, (b) 50% extra pay, and (c) gratuity pay "as provided by law." There is no dispute here that respondent was entitled to (a) and (b). The narrow issue involved in this case is whether the law provides for the payment of gratuity pay. The pertinent statute, the Joint Resolution of June 29, 1938 (52 Stat. 1246, 5 U. S. C. (1946 ed.) 86a, *supra*, pp. 2–3), grants holiday pay—colloquially called gratuity pay—only to those per diem employees who are prevented from working by the occurrence of a holiday. Respondent seeks to overcome the express language of the 1938 Resolution, limiting holiday pay to those who are prevented from working solely because of the occurrence of a holiday, by arguing that an administrative practice going back to 1895 had awarded double pay for holiday work and that neither the language of the 1938 Resolution nor its legislative history reveals an intent to repeal this administrative practice.

I

Pursuant to the 1938 Resolution a per diem worker is entitled to holiday pay as a statutory right only when he is "relieved or prevented from working solely because of the occurrence of a holiday." Hence, under the clear and unambiguous language of the statute respondent is not entitled to gratuity pay, as a matter of law, for work performed on a holiday. The earlier

doubtful administrative interpretation of differently worded statutes granting paid holidays—which held, by way of implication, that a per diem employee was as a matter of right entitled to double pay for holiday work—cannot be carried over to the 1938 Resolution which supersedes the prior acts and is worded in a way which does not admit of such construction. Nor is it significant that Congress failed to repeal this administrative practice expressly. When Congress writes a new statute it is to be interpreted according to its own terms; and they cannot be overcome by the failure of the Act or of its legislative history to spell out in so many words an intent to put an end to all the incidents and interpretative ramifications of the superseded legislation.

Holidays evoke two questions with respect to the pay of per diem employees. The first is that, since they are normally paid only for work actually done, they suffer a loss of income if a holiday prevents them from working as they otherwise would. On the other hand, if they work on a holiday the question arises whether they are entitled to extra compensation over and above their regular pay. This latter question is generally dealt with in the collective bargaining agreements under which per diem workers are employed. The Joint Resolution of 1938 limited the mandatory award of holiday pay to the situation where a per diem employee does not work,

and remitted the issue of extra compensation for holiday work to wage agreements and the administrative determination of the prevailing wage.

This reading of the 1938 Resolution is supported by contemporaneous interpretations given by the Comptroller General and by the Committee of the House of Representatives on the Revision of the Laws, both to the effect that it does not require the award of double pay for holiday work.

II

An examination of the legislative history of the 1938 Resolution reveals an intent of Congress to equalize the position of per diem and per annum workers with respect to holiday pay. Per diem workers were, henceforth, entitled to pay on every holiday; on the other hand, the ancient practices of mandatory double pay for holiday work (in addition to contractual extra pay) and of holiday pay for holidays falling on nonworking days were abolished.

The court below argued that the legislative history of the 1938 Resolution indicated merely an intent to award holiday pay for holidays established by administrative order and not specified in the statutes, and to abolish holiday pay for holidays falling on nonworking days; and the court felt that it could not ascribe to Congress the aim of requiring holiday work without additional mandatory compensation and of abro-

gating without specific words the old administrative practice of awarding double pay for holiday work. Even if one disregards the plain meaning of the 1938 Resolution, these arguments are unpersuasive. As pointed out above, double pay for overtime was expressly referred to in the legislative history of the 1938 Resolution, and there is good reason to believe that Congress desired to abolish the supposed mandatory requirement. The new statute does not prohibit the stipulation, by contract or otherwise, of extra compensation for holiday work, as witnessed by this very case in which 50% additional pay has been awarded pursuant to the wage agreement.

Moreover, the meaning of the former administrative practice of double pay for holiday work is doubtful. If it merely meant that under the statutes governing the employment of per diem employees the award of double pay for overtime was *authorized,* we take no issue with it; and it is not in the least affected by the 1938 Resolution. If it was supposed to mean that a statute—such as the legislation superseded by the 1938 Resolution—awarding paid holidays *requires,* by necessary implication, the award of double pay for holiday work, it is of very doubtful statutory authority and should have very little weight in applying the plain language of the 1938 Resolution.

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III

The wartime policy of nonobservance of holidays supports denial of gratuity pay to per diem employees. Per annum employees worked, without gratuity compensation, on all of the holidays for which respondent seeks to recover extra pay. In granting recovery, the Court of Claims has thus placed per diem employees in a superior status denied to per annum employees by consistent legislative and administrative policy. Neither the terms of the 1938 Resolution, nor its history, require such discrimination.

ARGUMENT

Respondent's claim is based on a wage agreement arrived at by a process of collective bargaining (Act of June 7, 1924, Sec. 1, 43 Stat. 658, 44 U. S. C. 40; *infra*, pp. 42–44; cf. *Determination of Wage Rates for Mechanical and Laboring Positions in the Federal Service*, (1944), 59 Monthly Labor Review 1063, 1069). The contract provides that employees required to work on legal holidays shall be paid the day rate plus 50 percent, in addition to their gratuity pay for the holidays *as provided by law*. Petitioner does not question the unanimous holding of the court below that respondent is entitled to the day rate plus 50 percent. The sole issue presented is whether respondent is entitled to an additional 100 percent gratuity pay for a holiday on which

he worked, together with all other wartime Government workers. We submit that he is not.

I

THE APPLICABLE PAY STATUTE—THE JOINT RESOLUTION OF JUNE 29, 1938—DOES NOT REQUIRE THE AWARD OF GRATUITY PAY TO GOVERNMENT PRINTING OFFICE EMPLOYEES WHO WORKED ON HOLIDAYS DURING THE WAR

Since the wage agreement provides that "gratuity pay" for holidays is to be paid "as provided by law" (*supra*, p. 3), the inquiry must be whether, and to what extent, any statute confers a right to such gratuity pay. The present statute governing holiday pay, colloquially called "gratuity pay," for Government employees whose compensation is fixed on a day, hourly or piece-work basis (referred to in this brief as per diem employees in contrast to the per annum employees) is the Joint Resolution of June 29, 1938 (52 Stat. 1246, 5 U. S. C. (1946 ed.) 86a), providing:

> That hereafter whenever regular employees of the Federal Government whose compensation is fixed at a rate per day, per hour, or on a piece-work basis are *relieved or prevented from working solely because of the occurrence of a holiday* such as New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, or any other day declared a holiday by Federal statute or Executive order, or any

day on which the departments and establishments of the Government are closed by Executive order, they shall receive the same pay for such days as for other days on which an ordinary day's work is performed. [Italics supplied.]

Our argument is that this 1938 Joint Resolution provides for the payment of gratuity holiday pay only to those per diem employees who are *prevented* from working because of the occurrence of a holiday, and it does not grant statutory extra compensation to those employees required to work on a holiday. Accordingly, where a per diem employee works on a holiday, the statute confers no right to gratuity pay, and none is therefore "provided by law." Since the passage of the Joint Resolution, this has been the consistent administrative interpretation.

A. THE EXPRESS TERMS OF THE 1938 RESOLUTION REQUIRE THE PAYMENT OF GRATUITY HOLIDAY PAY ONLY TO THOSE PREVENTED FROM WORKING AS THE RESULT OF A HOLIDAY

1. The Resolution expressly states the only condition under which holiday pay is statutorily required. It provides for such payment only where the employee is "relieved or prevented from working solely because of the occurrence of a holiday." If the holiday prevents him from working, he receives gratuity pay under the Resolution; if it does not prevent him from working, he is not entitled to holiday pay as a matter of statutory right. If he works on a

holiday, it is obvious that he has not been prevented from working because of the holiday and is therefore not entitled to any gratuity pay under the Resolution. As the dissenting judges said below (R. 35), the Resolution "is clear and unambiguous and must be taken to mean just what it says."[7] Since Kelly was not prevented or relieved from working on the holidays involved here, but, on the contrary, did work on those days, he is not entitled to any gratuity pay as a matter of law.

2. Insofar as an administrative gloss on earlier statutes had held that a per diem employee required to work on a holiday was entitled to double pay, that gloss fell with the legislation

[7] It is a basic rule of statutory interpretation that where the literal reading of a statute leads to no ambiguity nor to any futile or absurd results nor to any outcome plainly at variance with the policy of the legislation as a whole, the plain meaning of the words should normally be followed. *United States* v. *American Trucking Associations, Inc.*, 310 U. S. 534, 543. "Where the intent is plain, nothing is left to construction," *United States* v. *Fisher*, 2 Cranch 358, 386. It has been constantly said that the various rules of statutory construction, being confined to the resolution of ambiguity, have little place where the meaning of a statute is plain and clear. *Packard Co.* v. *Labor Board*, 330 U. S. 485, 492; *Osaka Shosen Line* v. *United States*, 300 U. S. 98; *Miguel* v. *McCarl*, 291 U. S. 442, 453; *United States* v. *Missouri Pac. R. Co.*, 278 U. S. 269, 277; *Russell Co.* v. *United States*, 261 U. S. 514, 519; *Greenport Co.* v. *United States*, 260 U. S. 512, 516; *Thompson* v. *United States*, 246 U. S. 547, 551; *Caminetti* v. *United States*, 242 U. S. 470; *United States* v. *Barnes*, 222 U. S. 513; *Hamilton* v. *Rathbone*, 175 U. S. 414, 421.

to which it was appended.[8] For this administrative holding had been derived by implication from the Act of January 12, 1895 (*infra*, p. 42), which "allowed" Government Printing Office employees eight specified legal holidays "with pay," and it is quite clear that the 1895 Act was necessarily superseded by the 1938 Resolution which made its own provision for holiday pay and contained its own list of holidays. Indeed, Section 2 of the 1938 Resolution expressly repealed all inconsistent or conflicting laws (*supra*, p. 3), and, of course, administrative interpretations of such laws would also necessarily fall.

Respondent and the Court of Claims insist, however, that there is no showing that Congress intended specifically to repeal the administrative practice with respect to premium pay which had been based on the 1895 statute. Even if this were so (but see *infra*, pp. 25 *ff*), it surely could not be said that the legislative history of a superseding statute must explicitly touch upon all phases of the incidence and interpretation of the act which is being displaced. Here, the body of the earlier statute was necessarily superseded, and the precise terms of the new act preclude a construction, akin to that placed on the somewhat ambiguous terms of the old act, making double pay for holi-

[8] We urge below that this gloss was erroneous and that the earlier statutes which simply "allowed" certain holidays "with pay" did not *require* the payment of premium pay for holiday work. *Infra*, pp. 33–37.

day work mandatory. In these circumstances, there is surely no warrant for rewriting the plain wording of the 1938 statute by placing upon it a gloss derived from a doubtful administrative interpretation of the earlier act and the supposed failure of the legislative history of the 1938 Resolution to indicate expressly that Congress intended to change this practice.

3. The incidence of holidays creates two problems with respect to the pay of per diem employees. The first is whether they should be compensated for the loss of income occasioned by the closing of the establishment on the holiday. The other issue is whether an employee required to work on a holiday should be granted additional compensation. In our view, the 1938 Resolution established mandatory statutory requirements only for the first situation, *i. e.*, pay for holidays not worked. The other problem of additional compensation for holiday work it remitted to the processes of collective bargaining and the discretion of the employing agencies. Whatever *mandatory* statutory requirements may previously have existed in this second sphere—and we believe there were none (*infra*, pp. 35–37)—were abolished, and the entire matter of wages for holidays worked was left free of statutory compulsion.

It was quite appropriate for the 1938 Resolution to take this position with respect to premium pay. Most per diem employees have their wage

rates determined in accordance with the prevailing rate paid for by private employees for similar work. Cf. *Determination of Wage Rates for Mechanical and Laboring Positions in the Federal Service* (1944), 59 Monthly Labor Review 1063.[9] Thus, the wage scales themselves will provide for a premium for holiday work if that is recognized by the local prevailing wage scale. It was, therefore, quite logical for the 1938 Resolution to remit the question of additional pay for holiday work to wage agreements.

The plain wording of the 1938 Resolution provides for mandatory holiday or gratuity pay only if the employee is prevented from working on a holiday; it does not provide for mandatory gratuity pay to an employee required to work on a holiday. In the absence of any other applicable statutory provision requiring gratuity pay in this situation, it follows that gratuity pay for holiday work is not "provided by law." Consequently, under the very terms of the wage agreement, expressly tied to the statutory requirement of gratuity pay, respondent is not entitled to any payment for his wartime holiday work

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[9] Since the wages of the employees of the Government Printing Office are arrived at by collective bargaining (*supra*, pp. 6–7, 14), they are as a practical matter tied to the prevailing wage. Cf. Appendix C, *infra*, pp. 47–48. See also the Act of January 13, 1883, 22 Stat. 402, which as early as 1883 authorized extra pay for work performed on holidays, *if recognized by the customs of the trade.*

in excess of the night rate paid to him, augmented by a premium pay of 50 percent of the day rate.

B. PETITIONER'S INTERPRETATION OF THE 1938 RESOLUTION IS SUPPORTED BY ITS CONTEMPORANEOUS INTERPRETATION BY THE COMPTROLLER GENERAL AND BY THE COMMITTEE ON REVISION OF THE LAWS OF THE HOUSE OF REPRESENTATIVES

This reading of the 1938 Resolution is supported by the contemporaneous interpretations given to it by the Comptroller General and by the Committee on Revision of the Laws of the House of Representatives which supervises the compilation of the United States Code.

1. *The Comptroller General's interpretation.*— Immediately after the passage of the Joint Resolution of June 29, 1938, various governmental agencies requested the opinion of the Comptroller General concerning the effect of the Resolution on holiday pay. The Comptroller General advised the Public Printer, as early as August 23, 1938, that the payment of gratuity pay for holiday work was no longer required. 18 Comp. Gen. 191, 192. Identical interpretations of the 1938 Resolution were given to the Secretary of the Navy, July 6, 1938 (18 Comp. Gen. 10), the Secretary of War, August 19, 1938 (18 Comp. Gen. 186), and to the Governor of the Panama Canal, August 29, 1938 (18 Comp. Gen. 206).

In this connection, it is significant that respondent's compensation is not fixed by statute but is contractual in character. The statute is

relevant here only because the wage agreement formula of "gratuity pay for the holiday as provided by law" (*supra*, p. 3) incorporates it by reference. If the employees of the Government Printing Office were dissatisfied with the Comptroller General's decision, they could have requested a revision of the pertinent terms of the wage agreement.[10] Their failure to do so must be considered an acquiescence in the ruling of the Comptroller General, or a recognition that compensation for holiday work at 250% of the rate for regular work was not required either by considerations of equity or by the customs of the trade (cf. Act of January 13, 1883, 22 Stat. 402, *infra*, p. 41).[11]

2. *The legislative interpretation.*—The 1940 Edition of the United States Code, prepared under the supervision of the Committee on the Revision of the Laws of the House of Representatives,[12] has also construed the 1938 Resolution as repealing the earlier statutes under which gratuity pay was administratively awarded, and, in effect, as not granting gratuity holiday pay

[10] The agreement may be changed once a year. Act of June 7, 1924, 43 Stat. 658, 44 U. S. C. (1946 ed.) 40.

[11] We believe that the principles of the 1883 Act still govern the collective bargaining process under the Act of June 27, 1924, *infra*, pp. 42–44 (cf. Appendix C, *infra*, pp. 47–48), although it probably has been repealed (*infra*, p. 37).

[12] Act of May 29, 1928, Sec. 2, 45 Stat. 1007, as amended, 1 U. S. C. (1940 ed.) 52 (d). The supervision is now exercised by the Committee on the Judiciary of the House of Representatives, 1 U. S. C. (1946 ed., Supp. IV) 201.

to those per diem employees who work on a holiday." 44 U. S. C. (1940 ed.) 44 has been annotated to the effect that the subject matter of the statute formerly codified in this section, *i. e.*, the Act of January 12, 1895, section 46 (*supra*, p. 18; *infra*, pp. 26, 34–35, 42), is now covered by 5 U. S. C. 86a, *i. e.*, the 1938 Resolution. A note to 5 U. S. C. (1940 ed.) 86[14] is even more explicit. It reads in pertinent part:

> As originally enacted this section also contained a provision relating to pay of employees for work on holidays. Said provision was repealed by Act of June 29, 1938, ch. 818, § 2, 52 Stat. 1247 * * *.

Accordingly, 5 U. S. C. (1940 and 1946 eds.) 86 omits the words "and shall receive the same pay as on other days" which originally appeared in the 1885 Resolution.

While the United States Code is only *prima facie* evidence of the law (1 U. S. C. (1946 ed., Supp. IV) 204), the construction placed by a Committee of the House of Representatives on a recent enactment is entitled to much weight, especially in a situation where the construction is reasonable and plausible and where there is

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[13] The 1946 Edition of the United States Code follows the 1940 Edition.

[14] 5 U. S. C. (1934 ed.) 86 referred to the Joint Resolution of January 6, 1885, 23 Stat. 516, *infra*, pp. 26, 34, 41–42, as amended, which awarded holidays with pay to all *per diem* employees of the Government, including employees of the Government Printing Office.

no inconsistency between the Statutes at Large and the Act. Cf. *Stephan* v. *United States*, 319 U. S. 423, 426; *Hoague-Sprague Corp.* v. *Frank C. Meyer Co.*, 31 F. 2d 583, 586 (E. D. N. Y.); *Balian Ice Cream Co.* v. *Arden Farms Co.*, 94 F. Supp. 796, 801–802 (S. D. Cal.).

These contemporaneous interpretations of the 1938 Resolution by the legislative agency [15] charged with the supervision of the payment of salaries to all governmental employees [16] and of the Committee on the Revision of the Laws of the House of Representatives are entitled to great weight and are not to be overturned unless clearly erroneous. *Inland Waterways Corp.* v. *Young*, 309 U. S. 517; *United States* v. *Jackson*, 280 U. S. 183, 193; *United States* v. *Citizens Loan & Trust Co.*, 316 U. S. 209, 214; *United States* v. *Madigan*, 300 U. S. 500, 506; *Norwegian Nitrogen Products Co.* v. *United States*, 288 U. S. 294, 315; *United States* v. *American Trucking Associations, Inc.*, 310 U. S. 534, 549; *Adams* v. *United States*, 319 U. S. 312, 314–315; *Edward's Lessee* v. *Darby*, 12 Wheat. 207, 210.

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[15] The General Accounting Office is an agency in the legislative branch of the Government. United States Government Organization Manual 1951–52, p. 34.

[16] Act of July 31, 1894, Sec. 7, 28 Stat. 206, as amended, 31 U. S. C. (1946 ed.) 72.

II

THE LEGISLATIVE HISTORY OF THE 1938 RESOLUTION FAILS TO SUPPORT RESPONDENT'S CLAIM THAT THE RESOLUTION DOES NOT AFFECT HIS RIGHT TO RECEIVE GRATUITY PAY FOR A HOLIDAY ON WHICH HE WORKED

We have shown that the terms of the 1938 Resolution are opposed to the holding below. In addition, we submit that its legislative history fails to support the construction attributed to it by respondent and adopted by the Court of Claims.

A. THE LEGISLATIVE HISTORY OF THE 1938 RESOLUTION INDICATES AN INTENT TO DISCONTINUE THE DIFFERENCES WITH RESPECT TO HOLIDAY WORK BETWEEN PER DIEM AND PER ANNUM EMPLOYEES AND TO DISCONTINUE DOUBLE PAY FOR HOLIDAY WORK

1. For many years, discrimination as to holiday pay existed between Federal per annum employees and their per diem colleagues. Per annum employees, whose salaries are traditionally regarded as payment for every calendar day in the year (whether a workday or non-workday), have always received their regular pay each period, regardless of any holidays on which they are excused from working. On the other hand, until 1880 per diem and hourly employees were not paid for holidays on which they did not work.

An 1880 Resolution eliminated this inequality and prevented holidays from reducing the amount of the regular pay checks of Government Print-

ing Office per diem employees. The Resolution "allowed" these employees specified "legal holidays with pay" and provided "that the said employees shall be paid for these holidays only when the employees of the other government departments shall be so paid." Joint Resolution of April 16, 1880 (21 Stat. 304). *Infra*, p. 41. Five years later, all per diem employees of the Government were also "allowed" specified legal holidays with the "same pay as on other days." Joint Resolution of January 6, 1885 (23 Stat. 516, 5 U. S. C. 86). *Infra*, pp. 41–42. And, in 1895, a Resolution applicable only to Government Printing Office employees "allowed" them eight specified "legal holidays with pay." 28 Stat. 607, Sec. 46, 44 U. S. C. 44. *Infra*, p. 42.

The purpose of these statutes, as has been noted, was to place per diem employees on a par with per annum employees. But the language of the resolutions was interpreted so as to accord per diem employees preferential treatment over per annum employees in two major respects: First, per diem employees were allowed a day's gratuity pay even when a holiday on which they did not work fell on Saturday or Sunday (a nonworkday) so that they received an extra day's pay in addition to the full week's pay otherwise earned. Secondly, if they worked on a holiday, they received a day's gratuity pay in addition to their regular rate of pay for that day. 13 Comp. Gen. 295, 297; 18 Comp. Gen. 186, 187. Per an-

num employees, holding comparable positions, received neither of these benefits. A day's pay was not added to their wages where a holiday occurred on a nonworkday. Nor did they receive any extra gratuity pay for a holiday on which they worked.

On the other hand, per diem employees were limited to the holidays named in the 1885 and 1895 Acts, while their per annum co-workers could obtain the advantage of additional holidays declared by Executive order.

2. The immediate occasion for the enactment of the 1938 Resolution was Executive Order No. 7763 of December 6, 1937, 2 F. R. 2685, which closed the Government offices on December 24, 1937, and excused all employees from work on that day.[17] While this order did not entail a loss of wages for per annum employees, per diem employees could not be paid for that day since the existing legislation—the 1885 and 1895 Acts—authorized a specified number of legal holidays with pay and the 24th of December or a holiday declared by Executive Order was not among them. A Joint Resolution was therefore introduced in the House of Representatives authorizing the payment of compensation to the per diem employees who had lost wages as the result of Executive Order No. 7763. H. J. Res. 551, 75th Cong., 3d sess.

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[17] Cf. H. Rept. No. 2683, 75th Cong., 3d sess. (hereinafter referred to as "Report").

The House Committee on Civil Service, to which the Resolution had been referred, was advised by the Civil Service Commission that the question of holiday pay for per diem workers raised broader issues which should be solved by general legislation, rather than on a piecemeal basis (Report, p. 2). A detailed decision of the Comptroller General to the Secretary of the Navy, included in the Committee Report (17 Comp. Gen. 519; Report, pp. 3–5), compared the effect of holidays on per diem workers and per annum workers.

The Comptroller General's decision disclosed that, as noted above, in one aspect the status of per diem workers was inferior to that of per annum workers. While the latter did not suffer any loss of income as the result of holidays, whether declared by statute or administrative action, per diem workers were entitled to pay only if the holiday was specified by statute; there was no authority to pay them if Government offices were closed by Executive Order. On the other hand, the Comptroller General pointed out, per diem employees were entitled to two benefits denied to per annum employees. While the latter were not entitled to any additional compensation if required to work on a holiday, per diem workers received not only regular pay but double pay. And if the holiday fell on a day on which the per diem worker would not have

worked anyway,[18] he was still considered entitled to holiday pay. Thus, the Comptroller General's decision stated:

> * * * even when any of such holidays falls on a nonwork day (such as a Saturday), such [per diem] employees receive pay for the holiday when no work is performed thereon, in addition to the full week's pay otherwise earned, and double compensation for the day if work is performed thereon. [Report, p. 5; 17 Comp. Gen. 519, 522.] [19]

The draft resolution submitted by the Civil Service Commission,[20] in the same form as it finally became law, appears to us to have been carefully drawn to deal with these various preferences and to equalize the treatment of per diem and per annum workers. The discussion of the Resolution on the floor of the House indicates that its purpose was not to bestow a unilateral gift on the per diem workers but to assimilate their status to that of the per annum employees. 83 Cong. Rec. 9466. Certainly this is the spirit, if not the precise letter, of the 1938 Resolution. It is significant that in 1946 the Public Printer gave effect to this spirit by extending to the employees of the Government Printing Office the benefits of the holiday provisions of the Federal

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[18] *E. g.*, because the holiday fell on a Saturday or other nonworking day.

[19] See also Report at p. 4; 17 Comp. Gen. 519, 521–522.

[20] Report, p. 2.

Employees Pay Act of 1945, Sec. 302,[21] although it is not in terms applicable to them (R. 10, 26).[22]

B. THE COURT OF CLAIMS' VIEW OF THE LEGISLATIVE HISTORY AND PURPOSE OF THE 1938 RESOLUTION IS ERRONEOUS

The court below based its award of double pay, in addition to the 50% extra pay, on the following main considerations: First, it held that, regardless of its broad language, the sole purposes of the 1938 Resolution were to include administrative holidays in the holidays with pay and to discontinue holiday pay if the holiday fell on a nonworking day, and that the Resolution had to be read as if so limited. Second, it refused to ascribe to Congress an intent to permit holiday work without extra pay or to abolish a traditional administrative practice without express and specific words of repeal.

1. The court below and respondent recognize that the 1938 Resolution was not limited to the

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[21] 59 Stat. 298, as amended by the Federal Employees Pay Act of 1946, Sec. 11, 60 Stat. 218, 5 U. S. C. (1946 ed.) 922. The 1946 Act raised the holiday pay from 150% to 200% of the regular rate.

[22] The Federal Employees Pay Act of 1945 applies only to the employees of the Executive branch of the Government and the employees of certain enumerated establishments of the Judicial and Legislative branches which do not include the Government Printing Office (Sec. 101, 59 Stat. 295, 5 U. S. C. (1946 ed.) 901). The Government Printing Office is an establishment of the Legislative branch of the Government. Cf. United States Government Organization Manual, 1951–52, p. 37.

grant to per diem employees of gratuity holiday pay for administrative holidays. They admit that it was also intended to terminate one of the instances in which per diem employees were preferred over per annum employees, namely, the award of holiday pay for holidays occurring on nonwork days (R. 30–31; Respondent's Brief in Opposition, p. 7). There is, however, no justification for this selectivity in finding the aims of the Resolution. We point out above that the Committee Report expressly referred to three instances of inequality between the per diem and the per annum employee. One was to the former's detriment: no pay on administrative holidays (Report, p. 4); and two were to his benefit: double pay for holiday work (Report, pp. 4 and 5) and holiday pay for holidays falling on nonworking days (Report, p. 5). The wording of the Resolution disposes of all three inequalities; and there is no qualitative difference between the three of them. Double pay for holiday work and holiday pay for a holiday falling on a nonworkday appear to be administrative practices of equal antiquity (R. 25, fn. 3). It could be argued with equal force that Congressional intent had exhausted itself in abolishing double pay for holiday work and had left intact holiday pay for holidays falling on nonworkdays. The Committee report mentions both instances of the preferential treatment of per diem employees

with equal emphasis,[23] and the wording of the 1938 Resolution is calculated to eliminate both of them; nothing in the legislative history of the Resolution reveals an intent to discriminate between the two inequalities.

2. The court below may have believed that under the Government's interpretation of the 1938 Resolution an employee who worked on a holiday could receive no more than the same pay as one who did not work (R. 31). The court itself conclusively answered that argument when it awarded respondent 50% extra pay for holiday work. As we have pointed out above (pp. 19–20, 21–22), the 1938 Resolution remits the issue of extra compensation for holiday work to the wage agreement or wage schedule under which the per diem employee works. Respondent's extra compensation for holiday work amounted to 50% until May 28, 1946; since then it has been 100% (R. 26). We submit that the existence of this extra pay is sufficient to rebut the argument that unless petitioner were paid 150% of the daily rate, in addition to the night rate, he would have to receive the same compensation whether or not he worked on a holiday.

3. The court below also placed great stress on the argument that Congress could not be presumed to have intended to deprive the per diem

[23] Actually, double pay for holiday work is mentioned twice (Report, pp. 4, 5) and holiday pay for holidays falling on nonworking days is mentioned only once (Report, p. 5).

employees of the forty-year old benefit of double pay for holiday work without being explicit about it.[24] We argue above (*supra*, pp. 18–19) that this view establishes the impossible condition that, in superseding earlier legislation, Congress must make specific reference to all the incidents and interpretations of the repealed statute. In addition, it is significant that the court's view places too great weight on an administrative ruling which is of very doubtful authority. For the former administrative holding that the payment of double pay for holiday work was required, rather than merely authorized, is highly questionable.

The first statute dealing with holiday pay for per diem workers was the Joint Resolution of April 16, 1880, 21 Stat. 304, *infra*, p. 41, which granted the employees of the Government Printing Office five legal holidays with pay. The occasion for this Joint Resolution was similar to the one which prompted the enactment of the 1938 Resolution. The Public Printer had concluded that he was not authorized to pay printers for New Year's Day, 1880, on which day the Government Printing Office was closed.[25] The

[24] But note that the court below felt less strongly about the equally old administrative practice of granting per diem employees holiday pay for holiday falling on nonworkdays (*supra*, pp. 30–32).

[25] Cf. 10 Cong. Rec. 708; 2170–2171; H. Rep. 585, 46th Cong., 2d sess.; First Comp. Dec., 1 Lawrence 31.

avowed purpose of the 1880 Resolution was to compensate the per diem employees, prevented from working by the occurrence of a holiday, for the loss of income; it was not to grant them additional compensation if they should be required to work on such day.[26]

Three years later, Congress passed the Act of January 13, 1883, 22 Stat. 402, *infra*, p. 41, which authorized the Public Printer to pay "extra prices" for work performed on legal holidays, on Sundays or at night, as the customs of the trade and the justice of the case might require. The very passage of the Act and its express reference to legal holidays indicates the recognition by Congress that the grant of paid holidays did not, by necessary implication, mean that an employee was entitled to double pay for holiday work. The purpose of the 1883 Act was to give the Public Printer discretionary authority to provide for extra compensation (13 Cong. Rec. 6076), not to require him to give it.

The Joint Resolution of January 6, 1885, 23 Stat. 516 (5 U. S. C. (1934 ed.) 86, *infra*, pp. 41–42) extended the benefits of the 1880 Resolution to all per diem employees. The purpose of this bill, again, was to "entitle" these employees "to four or five holidays during the year without losing their pay for those days." 16 Cong. Rec. 411.

The Act of January 12, 1895, 28 Stat. 601,

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[26] Cf. footnote 25.

dealt at length with the Government Printing Office. Sec. 46 (44 U. S. C. (1934 ed.) 44), *infra*, p. 42, provided for eight legal holidays with pay. The pertinent Committee Reports [27] point out that Sec. 46 (Sec. 47 of the bill) was substantially identical with the 1880 Resolution.[28]

It has been stipulated (R. 9), and found by the court below (R. 25), that from 1895 to 1938 per diem workers in the Government Printing Office received double pay for holiday work.[29] We submit that this administrative practice was correct if based on the theory that under the 1883 Act the Public Printer was *authorized* to award extra pay for holiday work, but that there is no justification for the rule that he was under a statutory *duty* to pay double pay for holiday work.

The decision of the Comptroller of the Treasury of November 20, 1901 (8 Comp. Dec. 322; cf. *supra*, p. 26) supposedly furnishes the legal basis for the administrative practice of double pay for holiday work which prevailed until 1938. The decision appears correct to the extent that it answered in the affirmative a question of the Public

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[27] Sen. Rept. No. 18, 52d Cong., 1st sess., p. 437; Sen. Rept. No. 574, 53d Cong., 2d sess., p. 24; H. Rept. No. 7, 53d Cong., 1st sess., pp. 7–8.

[28] This, we believe, disposes of any argument based on differences in the statutory language between the 1880 Resolution and Section 46 of the 1895 Act.

[29] From 1924 to 1938 the holiday pay was 250% the daily rate.

Printer whether he was authorized to award double pay for holiday work. He undoubtedly had this authority under the 1883 Act, and with respect to some categories of employees under Sec. 49 of the 1895 Act (28 Stat. 608).[30]

The Comptroller of the Treasury, however, went further and held that the grant of paid holidays in Sec. 46 of the 1895 Act (44 U. S. C. (1934 ed.) 44) required, by necessary inference, double pay for holiday work. In coming to this result, he may have assumed that the 1883 Act was repealed by the 1895 Act, since the latter was supposed to constitute a codification of the entire law referring to the Government Printing Office and, consequently, was thought to repeal, by implication, all earlier statutes germane to its subject (cf. 15 Comp. Dec. 426 and 473). The 1895 Act, however, did not in terms repeal all pertinent prior legislation, but only those laws which were in conflict with it; hence, the 1883 Act remained in force unless repugnant to the later one. *Cape Girardeau County Court* v. *United States;* 118 U. S. 68, 72. We submit that there is no conflict between the two statutes and that the 1883 Act remained unaffected by the 1895

[30] This section authorized the Public Printer to pay proofreaders and laborers "such rates of wages as he may deem for the interest of the Government and just to the persons employed". This certainly implied the authority to award extra pay for holiday work.

codification. In this, we believe, we are supported by the weight of authority.[31]

To the extent that the administrative practice of granting extra pay for holiday work was based on the statutory authority to pay extra compensation for holiday work, it was clearly correct, and was not affected by the 1938 Resolution. But the theory that the 1895 grant of paid holidays *required,* by necessary implication, the award of double pay for holiday work—without any administrative or collective bargaining implementation—is at variance with the language and history of the 1895 Act.

III

THE WARTIME POLICY OF NON-OBSERVANCE OF HOLIDAYS SUPPORTS DENIAL OF GRATUITY PAY TO PER DIEM EMPLOYEES

In normal times there is ample justification for paying an employee bonus or premium pay when he works on a holiday. Holiday work is more onerous and burdensome than work on a regular weekday. A holiday is a day for religious, patriotic, or recreational pursuits. As-

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[31] Scott and Beaman, *Index Analysis to Federal Statutes 1873–1907*, p. 486 and cf. 1340. 44 U. S. C. A. 40, Historical Note, and *Index to Federal Statutes 1874–1931*, p. 1286, both state that the 1883 Act was repealed only by the Act of June 7, 1924 (*infra*, pp. 42–44). There may be some argument to the effect that it survived even that statute, since it is silent on Sunday and holiday work.

signment to holiday work involves on the part of the employee a departure from the normal way of living. These considerations justify payment of premium pay to those federal employees who are required to work when other federal employees are excused from work and allowed to enjoy an uninterrupted holiday without any loss of pay.

The court below, however, completely overlooked the fact that during wartime none of these considerations is pertinent. Perhaps one of the least inconveniences in World War II was that suffered by civilian employees who had to give up their holidays so as to attain the maximum output needed for waging a successful war. The 1943 Presidential directives, declaring this need, required all civilian government employees to work on all holidays throughout the war with the exception of Christmas. *Supra,* pp. 4–6. The normal peacetime holidays were thus converted into regular workdays and employees generally were required to work on those days "without additional compensation". (Presidential directive, December 17, 1943, *supra,* pp. 5–6).

This policy of allowing gratuity pay for holiday work in peacetime (where such work is unusual) and of prohibiting it in wartime (when holidays are regular workdays) is reflected in the Federal Employees' Pay Act of 1945. That Act, which became law after VE-Day, but before VJ-Day, provided that its provision for premium

pay for holiday work should not take effect until "cessation of hostilities in the present war." 59 Stat. 298, Sec. 302, 5 U. S. C. 922. Postponement of the effective date of the premium pay provision was necessary because of express Congressional recognition of the policy that during World War II, "all holidays, except Christmas, are regular workdays." H. Rep. 726, 79th Cong., 1st sess., p. 13.[32] Since the holidays involved in the instant litigation were regular wartime workdays, it is apparent that the decision below allowing premium pay conflicts with well-established policy allowing such pay only for peacetime holidays in fact. Cf. *Di Benedetto* v. *United States,* 108 C. Cls. 18, certiorari denied, 332 U. S. 763. In doing so, the Court of Claims has placed per diem employees in a superior status expressly denied to per annum employees by consistent legislative and administrative policy. Nothing in the terms or history of the 1938 Resolution warrants this discrimination. On the contrary, there is neither legal nor equitable justification for overriding the express language of the 1938 Resolution in order to award respondent extra compensation for holiday work which is completely out of line with the wage policies prevailing at the time the work was performed.

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[32] This Report accompanied H. R. 3393, which became the Federal Employees' Pay Act of 1945.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that the judgment below is erroneous to the extent that it awards respondent double pay for holiday work in addition to the contractual 50% extra pay and, accordingly, should be reversed *pro tanto*.

PHILIP B. PERLMAN,
Solicitor General.
HOLMES BALDRIDGE,
Assistant Attorney General.
PAUL A. SWEENEY,
SAUL R. GAMER,
HERMAN MARCUSE,
Attorneys.

NOVEMBER 1951.

APPENDIX A

1. The Joint Resolution of April 16, 1880 (21 Stat. 304) provided:

> * * * That the employees of the Government Printing Office shall be allowed the following legal holidays with pay, to wit: the first day of January, the twenty-second day of February, the fourth day of July, the twenty-fifth day of December, and such day as may be designated by the President of the United States as a day of public fast or thanksgiving: *Provided,* That the said employees shall be paid for these holidays only when the employees of the other government departments shall be so paid: *And provided further,* That nothing herein contained shall authorize any additional payment to such employees as receive annual salaries.

2. The Act of January 13, 1883, 22 Stat. 402, provided:

> * * * That for extra work, ordered in emergencies, and performed on Sundays or legal holidays, or between the hours of midnight and eight ante meridian, excepting that done by regular organized night forces, the Public Printer is hereby authorized to pay such extra prices as the customs of the trade and the justice of the case may require.

3. The Joint Resolution of January 6, 1885 (23 Stat. 516, as amended by the Joint Resolution

of February 23, 1887, 24 Stat. 644, 5 U. S. C. (1934 ed.) 86) provided:

> *Holidays; for per diem employees.*—The employees of the Navy Yard, Government Printing Office, Bureau of Printing and Engraving, and all other per diem employees of the Government on duty at Washington, or elsewhere in the United States shall be allowed the following holidays, to wit: The 1st day of January, the 22nd day of February, the day of each year which is celebrated as "Memorial" or "Decoration Day", the 4th day of July, the 25th day of December, and such days as may be designated by the President as days for national thanksgiving, [and shall receive the same pay as on other days.][1]

4. The Act of January 12, 1895, Sec. 46 (28 Stat. 607, 44 U. S. C. (1934 ed.) 44) provided:

> *Holidays.*—The employees of the Government Printing Office shall be allowed the following legal holidays with pay, to wit: The 1st day of January, the 22nd day of February, the 4th day of July, the 25th day of December, Inauguration Day, Memorial Day, Labor's Holiday, and such day as may be designated by the President of the United States as a day of public fast or thanksgiving.

5. The Act of June 7, 1924 (43 Stat. 658, 44 U. S. C. 40) provides:

> * * * That on and after July 1, 1924, the Public Printer may employ, at such rates of wages and salaries, including com-

[1] The words in brackets have been omitted in 5 U. S. C. (1946 ed.) 86. Cf. *supra*, p. 23.

pensation for night and overtime work, as he may deem for the interest of the Government and just to the persons employed, except as otherwise provided herein, such journeymen, apprentices, laborers, and other persons as may be necessary for the work of the Government Printing Office; but he shall not, at any time, employ more persons than the necessities of the public work may require or more than two hundred apprentices at any one time: *Provided,* That on and after July 1, 1924, the minimum pay of all journeymen printers, pressmen, and bookbinders employed in the Government Printing Office shall be at the rate of 90 cents an hour for the time actually employed: *Provided further,* That except as hereinbefore provided, the rates of wages, including compensation for night and overtime work, for more than ten employees of the same occupation shall be determined by a conference between the Public Printer and a committee selected by the trades affected, and the rates and compensation so agreed upon shall become effective upon approval by the Joint Committee on Printing; if the Public Printer and the committee representing any trade fail to agree as to wages, salaries, and compensation either party is hereby granted the right of appeal to the Joint Committee on Printing, and the decision of said committee shall be final; the wages, salaries, and compensation determined as provided herein shall not be subject to change oftener than once a year thereafter: *Provided further,* That employees and officers of the Government Printing Office, unless otherwise herein fixed, shall continue to be paid at the rates of wages, salaries, and compensation (including night rate) now author-

ized by law until such time as their wages, salaries, and compensation shall be determined as hereinbefore provided.

SEC. 2. All Acts or Parts of Acts in conflict with the provisions of this Act are hereby repealed.

APPENDIX B

154–49299 SEPTEMBER 6, 1951.

PUBLIC PRINTER,
Government Printing Office,
Washington 25, D. C.

Re: *United States* v. *John Stuart Kelly et al.*, No. 209, Supreme Court

DEAR SIR: I have received a letter from Mr. Henry J. Fox, counsel for respondents in the above-entitled case, in which he requests that I advise you of the exact question in respect of which the Government is seeking Supreme Court review. As you know, the above case was brought in the Court of Claims by Kelly and 613 other Government Printing Office employees to recover additional pay for certain "holidays" on which they worked during World War II. They had been paid only the regular rate of pay for those days and claimed

(a) an additional 50% of the day rate for each "holiday" worked, and

(b) an additional day's pay as gratuity pay for each "holiday" worked.

In the Court of Claims the Government contended that the employees were not entitled to either (a) or (b) and urged that they should receive no more than they had already been paid—that is, the regular rate of pay. The Court of Claims, rejecting the Government's con-

tentions, ruled that the employees were entitled to both (a) and (b). Judge Whitaker, in a dissenting opinion in which Chief Judge Jones concurred, accepted our argument that the employees were not entitled to (b), but agreed with the majority that they were entitled to (a).

If certiorari is granted by the Supreme Court, we infend to urge that the Court of Claims erred in awarding the employees (b). We do not intend to raise any question in the Supreme Court as to whether the Court of Claims properly awarded them (a). The petition for certiorari we filed in the Supreme Court is so limited. A copy of that petition is enclosed.

Sincerely yours,

(S) Philip B. Perlman,
PHILIP B. PERLMAN,
Solicitor General.

Enclosure No. 91192.

APPENDIX C

UNITED STATES GOVERNMENT PRINTING OFFICE,
Washington 25, D. C., March 21, 1951.

Office of
The Public Printer

Honorable CARL HAYDEN, *Chairman,*
Joint Committee on Printing,
U. S. Senate,
Washington 25, D. C.

MY DEAR SENATOR HAYDEN: In accordance with the provisions of the Kiess Act, Title 44, Section 40 of the U. S. Code, wage conferences have been concluded with a committee representing the journeymen of our Composing Division—approximately 1300 employees.

The present rate for these employees in the Government Printing Office is $2.43 an hour. The weighted averaged in the 25 cities is $2.51. The Washington D. C. book and job scale is $2.54.

In accordance with the formula of paying either the weighted average of the 25 largest cities in the country or the local rate, whichever is the greater, I would recommend that the journeymen craftsmen in our Composing Division be paid at the rate of $2.54 an hour, that the present method of computing night and overtime rates be continued, and that the new rate become effective tomorrow, March 22, 1951.

This fits the formula and also makes for harmonious working conditions by not forcing our employees to work for less than the local rate of compensation.

Respectfully,

(S) John J. Deviny,
JOHN J. DEVINY,
Public Printer.

March 21, 1951.

Offer of Public Printer approved at the direction of the Joint Committee on Printing.

(S) CARL HAYDEN,
Chairman, Joint Committee on Printing.

U. S. GOVERNMENT PRINTING OFFICE: 1951